

LICENSE PLATE AUCTION GROUP (LPAG)

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October 22, 2014

Minutes to the Meeting

Members in Attendance: Bobby Juchem, Bob Gall, Peter Pike, Zach Pierce, Gina Robinson, Mark Simon and Rich Medina all via telephone.

Guests in Attendance: LeeAnn Morrill – AG's office, Chris Hochmuth – DOR, Marty Zimmerman – Zim Consulting all via telephone.

Prior to convening the meeting, Marty asked about how Postage or acquiring postage might work to send out the sponsorship packets and the invitations.

CONVENE: Bobby Convened the meeting at 9:10 a.m. A quorum was present.

Updates from LeeAnn Morrill:

- ✓ Contracts – LeeAnn met with the attorneys in her office regarding contracts and State Contracts and the State does not indemnify its contractors or their sub-contractors. It is as she believed in the last meeting where the indemnification actually flows the other direction – Contractor indemnifying the State. There was one example of an Agency indemnifying a contractor which required a memo from the AG's office and approval of the State Controller's office. Consequently, it could be done – a memo would have to come from the Governor's office asking to indemnify the Contractor, the Controller's office would have to approve, but it puts the AG's office in an interesting position as they are the STATE's attorney and are self-insured which does not necessitate malpractice insurance. If they were to represent Zim and Hand Bid they'd have to obtain malpractice insurance and this would have to be paid for from – somewhere, not the State. She doubted that this would be able to be worked out, or worked out in time for the auction.
- ✓ Recommendation – there is no cease and desist order or law suit, no specifics about the supposed infringement and Mr. Barnett/Mr. Schwartz seem to be reasonable people so the recommendation is to move forward with the auction with Zim and Hand Bid while negotiations continue. Further, that if it's agreed that a Royalty of some sort is due, including for previous auctions, that LPAG make an agreement with Hand Bid and Zim that these fees come out of the net proceeds of the auction. She didn't see a need for Zim or Hand Bid to get their Attorney's involved at this point. If they get into the process/patent issues, there may be a need to get input from Hand Bid.

Mark asked if Zim and Hand Bid were willing to move forward under these conditions and LPAG could indemnify Zim and Hand Bid in addition to any coverage their own carriers might have.

Marty said that Zim was willing to move forward, but he still needed to speak with Hand Bid. LeeAnn continued that even so, there would need to be all the same approvals mentioned above for any sort of coverage/indemnification at all, to move forward plus the malpractice. If there is any litigation, then the parties will have to stand separately (with their own attorneys).

Marty said that Hand Bid will say no. That if they don't have any indemnifications they won't move forward with the online auction, but negotiations should continue. The online auction in January that leads into the live event would be a separate event and is completely different. This affords time to settle the issue.

Peter asked what indemnification meant. LeeAnn explained that essentially the AG's office would have to defend Zim, and Hand Bid as well as LPAG. Additionally if there were damages, the State would have to pay all the damages assessed against Zim, Hand Bid and LPAG and possibly all of the legal fees.

Peter asked how people defend themselves from these types of things. LeeAnn pointed out again that the State is self-insured. Zim and Hand Bid have to have their own insurance which is required to do business with the State.

Bobby summarized the situation coming to the conclusion that the online auction for 10/24 be cancelled, negotiations continue and LPAG and its contractors move forward with the January event. Peter asked if there are consequences for not moving forward with the October event, no one seemed to think so given the circumstances.

Zach discussed that there were reasons why the State doesn't indemnify Contractors, and that the Governor's office was in agreement with the AG's office.

Bobby moved cancellation of the online auction for 10/24 and that negotiations continue. Bob 2nd. Mark asked if LeeAnn was able to determine if LPAG was covered by the risk management fund. LeeAnn still didn't have a firm answer but didn't think it had any bearing. Mark then asked if we shouldn't indemnify Zim and Hand Bid for January's event(s). Bob thought LPAG should discuss this on the 27th.

Bobby called the vote:

- ❖ Gina – Yes
- ❖ Mark – Yes
- ❖ Zach – yes
- ❖ Rich – Yes
- ❖ Peter – (lost phone signal)
- ❖ Bob – Yes
- ❖ Bobby – Yes
- ❖ Motion passed.

Zach, LeeAnn and Marty discussed further Mark's point about indemnifying the Contractors should be discussed further and how the January event differs enough to not be an infringement and how there isn't enough information from Mr. Barnett about what the infringements are. Zim is still willing to move forward with the January event.

Rich believed that the January event could not go on, and in fact no further events could take place until the patent issue is resolved.

LeeAnn continued to agree that negotiations and a solution needed to be reached.

Mark asked what it would cost LPAG to buy out Hand Bid's platform so that LPAG could assume all the liability. Rich pointed out that it didn't really solve any problems.

Bobby noted the discussions were becoming circular and asked if there were any NEW discussions. As there was nothing new Bobby adjourned the meeting.

Bobby adjourned the meeting at 10:07 a.m.

Respectfully submitted
Chris Hochmuth
Administrative Services Supervisor
Title and Registration Sections
Department of Revenue